

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

William Witter,

Petitioner

v.

William Gittere, et al.,

Respondents

Case No.: 3:20-cv-00345-APG-CSD

Scheduling Order

In this habeas proceeding under 28 U.S.C. § 2254, William Witter, a Nevada prisoner sentenced to death, challenges the same criminal proceeding he challenged in a previous federal case that resulted in a final order denying relief on the merits and directing entry of judgment. *Witter v. Baker*, 2:01-cv-01034-RCJ-CWH; ECF No. 247.¹ In February 2024, the U.S. Court of Appeals for the Ninth Circuit reversed my decision to dismiss Witter’s habeas petition in this case as an unauthorized “second or successive” petition under 28 U.S.C. § 2244(b). ECF No. 44. The court of appeals has issued its formal mandate (ECF No. 47), so I will issue a scheduling order for further proceedings in this court.

I THEREFORE ORDER that the following schedule governs further proceedings in this action:

1. Response to Petition. The respondents may file and serve an answer or other response to the petition by December 27, 2024.

¹ That case remains on appeal in the U.S. Court of Appeals for the Ninth Circuit. USCA Case Nos. 14-99009, 14-99010, and 17-15972.

1 **2. Reply and Response to Reply.** The petitioner will have 60 days following service of
2 an answer to file and serve a reply. The respondents will have 45 days following service of a
3 reply to file and serve a response to the reply.

4 **3. Briefing of Motion to Dismiss.** If the respondents file a motion to dismiss, the
5 petitioner will have 60 days following service of the motion to file and serve an opposition to the
6 motion. The respondents will thereafter have 45 days following service of the opposition to file
7 and serve a reply.

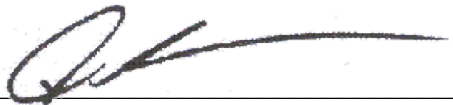
8 **4. Discovery.** If the petitioner wishes to move for leave to conduct discovery, he must
9 file and serve such motion concurrently with, but separate from, the response to the respondents'
10 motion to dismiss or the reply to the answer. Any motion for leave to conduct discovery filed
11 before that time may be considered premature and denied without prejudice on that basis. The
12 respondents will file and serve a response to any such motion concurrently with, but separate
13 from, their reply in support of their motion to dismiss or their response to the petitioner's reply.
14 Thereafter, the petitioner will have 30 days to file and serve a reply in support of the motion for
15 leave to conduct discovery.

16 **5. Evidentiary Hearing.** If the petitioner wishes to request an evidentiary hearing, he
17 must file and serve a motion for an evidentiary hearing concurrently with, but separate from, the
18 response to the motion to dismiss or the reply to the answer. Any motion for an evidentiary
19 hearing filed before that time may be considered premature and denied without prejudice on that
20 basis. The motion for an evidentiary hearing must specifically address why an evidentiary
21 hearing is required and must meet the requirements of 28 U.S.C. § 2254(e). The motion must
22 state whether an evidentiary hearing was held in state court and, if so, where the transcript is
23 located in the record. If the petitioner files a motion for an evidentiary hearing, the respondents

1 will file and serve a response to that motion concurrently with, but separate from, their reply in
2 support of their motion to dismiss or their response to the petitioner's reply. Thereafter, the
3 petitioner will have 30 days to file and serve a reply in support of the motion for an evidentiary
4 hearing.

5 **I FURTHER ORDER** that the Clerk of the Court is directed to administratively reopen
6 this case.

7 Dated: October 16, 2024

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10 U.S. District Judge Andrew P. Gordon
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